



# **LEGAL ARCHEOLOGY: STUDIES IN CASES IN CONTEXT LAW 214H1S**

**VOL. II**

**Professor Angela Fernandez**

**Winter 2008**



*These materials have been reproduced for the exclusive use of students in the Faculty of Law, University of Toronto and not for sale or reproduction.*



**LEGAL ARCHEOLOGY: STUDIES IN  
CASES IN CONTEXT  
LAW 214H1S**

**VOL. II**

**Professor Angela Fernandez**

**Winter 2008**



*These materials have been reproduced for the exclusive use of students in the Faculty of Law, University of Toronto and not for sale or reproduction.*



Digitized by the Internet Archive  
in 2018 with funding from  
University of Toronto

<https://archive.org/details/legalarcheologys02fern>

## READING WEEK

### IV. PERSPECTIVES & CASE-IN-CONTEXT STUDIES

#### A. Persons in the Law (Class 7, February 25)

- Joan Vogel, "Cases in Context: Lake Champlain Wars, Gentrification and *Ploof v. Putnam*," 45 *St. Louis University Law Journal* (2001): 791-815.....1
- Judith L. Maute, "*Peevyhouse v. Garland Coal & Mining Co.* Revisited: The Ballad of Willie and Lucille," 89 *Northwestern Law Review* (1995): 1341, 1345-70, 1372-4, 1446-55, 1478-81 .....14
- Debora L. Threedy, "Legal Archaeology: Excavating Cases, Reconstructing Context," 80 *Tulane Law Review* (2006): 1197-1238.....37

#### B. The *Palsgraf* Case (Class 8, March 3)

- Palsgraf v. Long Island Railroad Co.* (N.Y. C.A. 1928).....58
- Richard A. Posner, *Cardozo: A Study in Reputation* (Chicago; London: University of Chicago Press, 1990) 33-57 .....62
- John T. Noonan, Jr., "The Passengers of *Palsgraf*" in *Persons and Masks of the Law: Cardozo, Holmes, Jefferson, and Wythe as Makers of the Masks* (New York: Farrar, Straus and Giroux, 1975) 111-51, 191-97 .....75

#### C. The *Palsgraf* Case Cont. (Class 9, March 10)

- Andrew L. Kaufman, *Cardozo* (Cambridge, Mass.; London: Harvard University Press, 1998) 286-312 .....100
- Robert L. Rabin & Stephen D. Sugarman, "Introduction" to *Tort Stories*, Robert L. Rabin & Stephen D. Sugarman eds. (New York: Foundation Press, 2003) 1-10 .....115
- Saul Levmore, "*The Wagon Mound Cases*: Foreseeability, Causation, and Mrs. *Palsgraf*," in *Tort Stories*, Robert L. Rabin & Stephen D. Sugarman eds. (New York: Foundation Press; 2003) 129-50 .....121

#### D. Duress & Consent (Class 10, March 17)

- Debora L. Threedy, "A Fish Story: *Alaska Packers' Association v. Domenico*," *Utah Law Review* (2000): 185-221.....133
- Robert W. Gordon, "Using History in Teaching Contracts: The Case of *Britton v. Turner*," 26 *University of Hawaii Law Review* (2004): 421-34 .....152



Case & Introduction by Richard W. Bourne in “Five Approaches to Legal Reasoning in the Classroom: Contrasting Perspectives on *O’Brien v. Cunard S.S. Co. Ltd.*,” *57 Missouri Law Review* (1992): 346-62.....158

Jay M. Feinman, “The Ideology of Legal Reasoning in the Classroom,” *57 Missouri Law Review* (1992): 363-69.....167

### **E. Consent cont. (Class 11, March 24)**

Ann C. Shalleck, “Feminist Legal Theory and the Reading of *O’Brien v. Cunard*,” *57 Missouri Law Review* (1992): 371-97.....171

Robert H. Lande, “A Law & Economics Perspective on a ‘Traditional’ Torts Case: Insights for Classroom and Courtroom,” *57 Missouri Law Review* (1992): 399-441 .....185

Taunya Lovell Banks, “Teaching Laws With Flaws: Adopting a Pluralist Approach to Torts,” *57 Missouri Law Review* (1992): 443-54.....207

Richard W. Bourne, “A ‘Traditionalist’s’ Approach to Teaching *O’Brien* and to Ideology in the Classroom,” Jay M. Feinmann, “The Ideology of Legal Reasoning in the Classroom,” *57 Missouri Law Review* (1992): 455-99.....213

### **F. *Roe v. Wade* (Class 12, March 31)**

U.S. Constitution, 9<sup>th</sup> & 14<sup>th</sup> Amendments.....235

*Griswold v. Connecticut*, 381 U.S. 479 (1965), as reproduced in Craig R. Ducat, *Constitutional Interpretation*, 8<sup>th</sup> ed. (Belmont, CA: Thomson West, 2004) 707-13 .....236

*Roe v. Wade*, 410 U.S. 113 (1973), as reproduced in Craig R. Ducat, *Constitutional Interpretation*, 8<sup>th</sup> ed. (Belmont, CA: Thomson West, 2004) 713-19 .....240

N.E.H. Hull & Peter Charles Hoffer, “Abortion and Birth Control” in *Roe v. Wade: An Abortion Rights Controversy in American History*, Landmark Law Cases & American Society Series (University Press of Kansas, 2001) 73-88.....244

N.E.H. Hull & Peter Charles Hoffer, “From Repression to Reform, the Road to *Roe*, 1960-1970” in *Roe v. Wade: An Abortion Rights Controversy in American History*, Landmark Law Cases & American Society Series (University Press of Kansas, 2001) 89-134 .....252

Lucinda Finley, “The Story of *Roe v. Wade*: From a Garage Sale for Women’s Lib, to the Supreme Court, to Political Turmoil” in *Constitutional Law Stories*, Michael C. Dorf ed. (New York: Foundation Press, 2004) 359-405.....275

**G. *Roe v. Wade* cont. (Class 13, April 7)**

Jack M. Balkin, “ <i>Roe v. Wade: An Engine of Controversy</i> ” in <i>What Roe v. Wade Should Have Said: The Nation’s Top Experts Rewrite America’s Most Controversial Decision</i> (New York: New York University Press, 2005) 3-27 .....	299
Riva B. Siegel, “Concurring,” in <i>What Roe v. Wade Should Have Said: The Nation’s Top Experts Rewrite America’s Most Controversial Decision</i> (New York: New York University Press, 2005) 63-85 .....	312
Mark Tushnet, “Concurring,” in <i>What Roe v. Wade Should Have Said: The Nation’s Top Experts Rewrite America’s Most Controversial Decision</i> (New York: New York University Press, 2005) 86-91 .....	324
Cass Sunstein, “Concurring in the Judgment,” in <i>What Roe v. Wade Should Have Said: The Nation’s Top Experts Rewrite America’s Most Controversial Decision</i> (New York: New York University Press, 2005) 148-51 .....	327
Jeffrey Rosen, “Dissenting,” in <i>What Roe v. Wade Should Have Said: The Nation’s Top Experts Rewrite America’s Most Controversial Decision</i> (New York: New York University Press, 2005) 170-86.....	329

